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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California  
corporation,  
  
Plaintiff,  
  
v.  
  
HYPHY MUSIC, INC.,  
  
Defendant.

**Case No.: 1:20-cv-00988-JLT-BAM**

[Assigned to the Hon. Jennifer L. Thurston]

**HYPHY MUSIC, INC.'S SEPARATE  
STATEMENT OF UNDISPUTED FACTS  
IN OPPOSITION TO YELLOWCAKE,  
INC., AND COLONIZE MEDIA, INC.'S  
MOTION FOR SUMMARY JUDGMENT  
AND SUMMARY ADJUDICATION**

HYPHY MUSIC, INC.,  
  
Counterclaimant,  
  
v.  
  
YELLOWCAKE, INC.; COLONIZE  
MEDIA, INC.; JOSE DAVID  
HERNANDEZ; and JESUS  
CHAVEZ SR,  
  
Counter-Defendants.

Date: September 29, 2023  
Time: 9:00 a.m.  
Dept.: Courtroom 4 (7<sup>th</sup> Floor)  
2500 Tulare Street  
Fresno, CA 93721  
Judge: Hon. Jennifer L. Thurston

HYPHY MUSIC'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN  
OPPOSITION TO YELLOWCAKE AND COLONIZE MEDIA' MOTION FOR  
SUMMARY JUDGMENT / ADJUDICATION

## MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Federal Rule of Civil Procedure 56 and Eastern District of California Local Rule 260, Defendant Hyphy Music, Inc. (“**Hyphy**”) hereby responds to the Separate Statement of Undisputed Facts submitted by Plaintiff Yellowcake, Inc. (“**Yellowcake**”), and Counter-Defendants Yellowcake, Colonize Media, Inc. (“**Colonize**”), and Jose David Hernandez (“**Hernandez**”) (collectively, “**Counter-Defendants**”), in support of their Motion for Summary Judgment filed on or about July 14, 2023 (the “**Motion**”).

	Plaintiff/Counterdefendants , <u>Undisputed Facts</u>	Evidence in Support of Plaintiff/ Counterdefendants , <u>Undisputed Facts</u>	Defendant’s Response and Supporting Evidence
1	Jesus Chavez Sr. (“Chavez”) is the founder of the band Los Originales de San Juan (the “Band”).	<a href="#">Dkt. 46-2</a> , ¶ 3-4.	Disputed. Jesus Chavez Sr. (“ <b>Chavez</b> ”) was the lead singer and co-equal member of the Spanish-language musical group Los Originales De San Juan (the “ <b>Group</b> ”), which operated as an unincorporated partnership comprised of Chavez and fellow band members Domingo Torres Flores (“ <b>Flores</b> ”) and Alfonso Vargas (“ <b>Vargas</b> ”).  Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Deposition Transcript of Alfonso Vargas (“ <b>Vargas Depo</b> ”) at 17:16-19, 27:17- 22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“ <b>Flores Depo</b> ”) at 47:15- 25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-

1			86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Jesus Chavez, Sr. Deposition, Volume I (“ <i>Chavez Depo I</i> ”) at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Jesus Chavez, Sr. Deposition, Volume II (“ <i>Chavez Depo II</i> ”) at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.
2	Chavez was always the bandleader, principal performer, principal songwriter of the Band.	<a href="#">Dkt. 46-2</a> , ¶ 3-4.	Disputed. Chavez was the lead singer and co-equal member of the Group, which operated as an unincorporated partnership comprised of Chavez and fellow band members Flores and Vargas.  Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.
3	Chavez owned all intellectual property produced by the Band including all copyrights in its sound recordings and trademarks.	<a href="#">Dkt. 46-2</a> , ¶ 3-4.	Disputed. Flores and Vargas were plainly joint authors of the sound recording albums at issue in this dispute (the “ <i>Albums</i> ”), as evidenced by the facts that they: (a) along with Chavez, were equally credited as “Los Originales De San Juan”; (b) shared equally in all profits generated by the Group and

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			<p>were granted equal access to inspect all records related to the Group’s receipt of profits; and (c) were equally involved in all Group activities. Additionally, no paperwork exists to establish that Flores and Vargas are anything other than co-equal, co-controlling members of the Group, and at no point has Chavez ever obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:23-19:3; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>
4	2013 and 2015, Chavez, recording under the moniker Los Originales de San Juan, recorded six albums titled: (i) <i>Los Originales de San Juan- “El Campesino”</i> ; (ii) <i>Los Originales de San Juan- “Corridos de Poca M”</i> ; (iii) <i>Los Originales de San Juan- “En Vivo Desde La Cantina de Mi Barrio”</i> ; (iv) <i>Los Originales de San Juan- “Nuestra Historia En</i>	<a href="#"><u>Dkt. 46-2, ¶ 7</u></a>	<p>Disputed, to the extent that Chavez was merely the lead singer, and a co-equal member of, the Group, which operated as an unincorporated partnership comprised of Chavez and fellow band members Flores and Vargas, who themselves were plainly joint authors of the Albums based on their contributions to the recording of such Albums.</p>

	<i>Vivo</i> "; (v) <i>Los Originales de San Juan- "Amigos y Contrarios</i> "; and (vi) <i>Los Originales de San Juan- "Naci Con Suerte de Rey Con Mariachi</i> " (collectively "Albums").		Declaration of Jose Martinez (" <b>Martinez Decl.</b> ") at ¶ 4; Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.
5	Hector Omar Rosales ("Rosales") acted as the audio engineer for four (4) of the Albums recorded in his studio.	Rosales Dec. <a href="#">Dkt. 46-1</a> , ¶ 5; Chavez Dec. <a href="#">Dkt. 46-2</a> , ¶ 11.	Undisputed.
6	Chavez was the sole producer of the Albums and no employee or anybody else affiliated with Morena produced any songs on the Albums or provided any original creative input into the recording of the Albums.	Rosales Dec. <a href="#">Dkt. 46-1</a> , ¶ 9; Chavez Dec. <a href="#">Dkt. 46-2</a> , ¶ 8.	Disputed. Hyphy closely collaborated with the Group to produce the Albums. For the first three (of five) Albums, Hyphy: (a) helped determine the "theme" and overall creative direction of each Album; (b) crucially selected the songs to be included in each Album; (c) selected the recording studio and paid for all costs associated with the recording of each Album; (d) hired the sound engineer; (e) paid the Group a substantial mount for recording the Albums; and (f) Oversaw and generally supervised the recording and production of each Album. For the final two (of five) Albums (which are each comprised of recordings from a previous

1			live performance by the Group), Hyphy also: (a) selected and paid for the venue of the live performance; (b) selected the songs to be performed at the live performance (and then recorded for the Albums); (c) directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance, respectively; (d) wrote a script for the history of the Group as presented as part of the Group's live performance, and hired an "MC"/commentator who narrated the script; and (e) re-recorded portions of the guitarist's contributions to the live performance afterwards using a new guitarist selected, hired and paid for by Hyphy.
2			Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Deposition Transcript of Jose Martinez (" <b>Martinez Depo</b> ") at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.
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20	7	At no time during their recording or subsequent existence were there any other co-owners of the Copyrighted sound recordings in the albums besides Chavez.	Chavez Dec. <a href="#">Dkt. 46-2</a> , ¶¶ 8-19.
21			Disputed. Flores and Vargas were plainly joint authors of the Albums, as evidenced by the facts that they: (a) along with Chavez, were equally credited as "Los Originales De San Juan"; (b) shared equally in all profits generated by the Group and were granted equal access to inspect all records related to the Group's receipt of profits; and (c) were equally involved in all Group activities. Additionally, no
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			<p>paperwork exists to establish that Flores and Vargas are anything other than co-equal, co-controlling members of the Group, and at no point has Chavez ever obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof. Disputed. Hyphy closely collaborated with the Group to produce the Albums. For the first three (of five) Albums, Hyphy: (a) helped determine the “theme” and overall creative direction of each Album; (b) crucially selected the songs to be included in each Album; (c) selected the recording studio and paid for all costs associated with the recording of each Album; (d) hired the sound engineer; (e) paid the Group a substantial mount for recording the Albums; and (f) Oversaw and generally supervised the recording and production of each Album. For the final two (of five) Albums (which are each comprised of recordings from a previous live performance by the Group), Hyphy also: (a) selected and paid for the venue of the live performance; (b) selected the songs to be performed at the live performance (and then recorded for the Albums); (c) directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and</p>
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1			video of the live performance, respectively;
2			(d) wrote a script for the history of the Group as presented as part of the Group's live performance, and hired an
3			"MC"/commentator who narrated the script; and (e) re-recorded portions of the guitarist's contributions to the live performance afterwards using a new guitarist selected, hired and paid for by Hyphy.
4			Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:1; Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:23-19:3; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.
8	8	Martinez is the chief executive officer and owner of Hyphy Music, Inc.	See Martinez Trans, Pg. 12, Lns. 4-5.
9	9	In or around February 2013, Chavez and Hyphy entered into an <i>oral distribution agreement</i> for the Albums to be <i>recorded by Chavez</i> under the name Los Originales de San Juan and distributed by Hyphy ("Hyphy Distribution Agreement").	Chavez Dec., <a href="#">Dkt. 46-2</a> , Hyphy's Counterclaims, <a href="#">Dkt. 7</a> , ¶ 16; and First Amended Counterclaim, <a href="#">Dkt. 15</a> , ¶ 16; Opposition to Motion to Dismiss, <a href="#">Dkt. 27</a> , Pg. 2 Lns.
10			Undisputed.
11			Disputed. Hyphy closely collaborated with the Group to produce the Albums, which they orally agreed were to be owned by Hyphy.
12			Martinez Decl. at ¶¶ 3, 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto,



1			1-5.	Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:1.
2	1	Moreover, Hyphy claimed	Hyphy's	Disputed. Hyphy closely
3	0	on multiple occasions that it	Counterclaims,	collaborated with the Group
4		had allegedly	<a href="#">Dkt. 7</a> , ¶ 16;	to produce the Albums,
5		"commissioned" Chavez,	Hyphy's Amended	which they orally agreed
6		<i>and Chavez alone</i> , to record	Counterclaims,	were to be owned by
7		the Albums.	<a href="#">Dkt. 15</a> , ¶ 16;	Hyphy.
8			Defendant's	Martinez Decl. at ¶¶ 3, 8;
9			Opposition to	Begakis Decl. at ¶ 8,
10			Plaintiff-	Exhibit "N" thereto,
11			Counterdefendants	Martinez Depo at 75:6-
12			' Motion to	76:25, 83:11-84:22, 84:24-
13			Dismiss	85:8, 85:14-86:1.
14			Defendant-	
15			Counterclaimant's	
16			Counterclaims <a href="#">Dkt.</a>	
17			<a href="#">27</a> , Pg. 1, Ln. 27-	
18			Pg. 2, Ln. 5;	
19			Hyphy's Reply to	
20			Counterdefendants	
21			' Challenge to The	
22			Validity of Certain	
23			Copyright	
24			Registrations <a href="#">Dkt.</a>	
25			<a href="#">45</a> , Pg. 1, Lns. 16-	
26			18; Declaration of	
27			Jose Martinez in	
			Support of Reply	

1		to	
2		Counterdefendants	
3		' Challenge to the	
4		Validity of Certain	
5		Copyright	
6		Registrations , <a href="#">Dkt.</a>	
7		<a href="#">45-1</a> , Pg. 1, Lns. 8-	
8		16.	
9	1	Chavez had no intent to	Chavez Dec. <a href="#">Dkt.</a>
10	1	transfer any ownership	<a href="#">46-2</a> , ¶ 14.
11		interest in the Albums to	
12		Hyphy nor is there any	Disputed. Chavez's
13		evidence in the record to	intention to record the
14		suggest that he did.	works on behalf of Hyphy
15			is evidenced by the Group's
16			close collaboration with
17			Hyphy to produce the
18			Albums, and by the oral
19			agreement entered into
20			between and among the
21			parties in exchange for
22			valuable consideration that
23			the Albums would be
24			owned by Hyphy. Hyphy
25			also subsequently
26			distributed and otherwise
27			exploited the Albums for
28			years pursuant to the
			Agreement, without Chavez
			ever making any claim for
			further payment as a result
			of such distribution or
			exploitation.
			Martinez Decl. at ¶¶ 3, 8;
			Begakis Decl. at ¶ 8,
			Exhibit "N" thereto,
			Martinez Depo at 75:6-
			76:25, 83:11-84:22, 84:24-
			85:8, 85:14-86:1.
	1	Jose Martinez, as a	Pg. 114, Ln. 25-
	2	sophisticated music	Pg. 115, Lns. 1-3
		business executive, testified	of the Deposition
		that he intentionally entered	Transcript of Jose
		into an oral-only agreement	Martinez
			Disputed. Jose Martinez
			("Martinez"), through
			Hyphy, entered into an oral
			agreement with the Group,
			through Chavez, for the
			parties to co-create various
			sound recordings embodied
			on multiple albums to be
			owned by Hyphy, in

1		with to distribute the		exchange for valuable
2		Albums.		consideration paid to the
3				Group by Hyphy through
4				Chavez.
5				Martinez Decl. at ¶¶ 3, 8;
6				Begakis Decl. at ¶ 8,
7				Exhibit “N” thereto,
8				Martinez Depo at 75:6-
9				76:25, 83:11-84:22, 84:24-
10				85:8, 85:14-86:1.
11	1	Plaintiff Yellowcake, Inc.	Kevin Berger	Undisputed.
12	3	(“Yellowcake”) is primarily	Declaration, ¶ 2	
13		engaged in the business of		
14		exploiting various		
15		intellectual property rights.		
16	1	Colonize is a company	Berger Dec., ¶ 13	Disputed. Yellowcake
17	4	engaged in the business of		utilizes Counter-Defendant
18		digital music distribution		Colonize as its “distribution
19		and distributes the Albums		arm” to release and exploit
20		on behalf of Yellowcake.		rights acquired by
21				Yellowcake, but for all
22				intents and purposes
23				Yellowcake and Colonize
24				operated – and continue to
25				operate – as one single
26				economic entity, with
27				common ownership,
28				common business
				operations, common office
				space, common staff, and
				many other common
				resources.
				Begakis Decl. at ¶ 10,
				Exhibit “P” thereto,
				Hernandez Depo I at 80:3-
				20.
	1	Counter-defendant Jose	Hernandez Dec., ¶	Undisputed.
	5	David Hernandez	1.	
		(“Hernandez”) is a principal		
		of Colonize.		
	1	On or about March 21,	Berger Dec., ¶ 9.	Disputed. After Counter-
	6	2019, Yellowcake and		Defendant Hernandez
		Chavez entered into an		approached and convinced
		Asset Purchase and		Chavez, without Hyphy or
		Assignment Agreement		the rest of the Group’s
		(“APA Agreement”),		knowledge, to assign the
		whereby Yellowcake		Albums to Yellowcake in
		purchased Chavez’s entire		exchange for payment of
		ownership of the rights, title		\$500,000, Chavez and
		and interests in the sound		Yellowcake codified their
		recordings which comprised		purported agreement via an
		the works of Los Originales		“Asset Purchase and

	De San Juan, including the Albums.		<p>Assignment Agreement executed on or about March 21, 2019 (the “Asset Purchase Agreement”). Although Section 13.e. of the Asset Purchase Agreement sets forth Chavez’s purported representation and warranty to Yellowcake that Chavez “was the only owner of” the Albums with “good and marketable title” thereto, Chavez never obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039); Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 107:4-20, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>
17	In the APA, Chavez represented that he owned all rights transferred to Yellowcake therein.	Berman Dec. <u>Exh. “B”</u> ¶ 13(e).	Undisputed.
18	Prior to entering into the APA, Yellowcake did due diligence and searched the United States Copyright Office (“USCO”) to determine whether there were any potential competing copyright registrations filed for the	Berger Dec., ¶¶ 7-8	<p>Disputed. Yellowcake did not conduct any due diligence with the respect to the Albums or the transaction contemplated by the Asset Purchase Agreement.</p> <p>Begakis Decl. at ¶ 10;</p>

1		Albums and found none, <i>because there were none.</i>		Exhibit “P” thereto, Hernandez Depo I at 109:22-110:11.
2	1	Following its execution of the APA Agreement, Yellowcake complied with all requirements set forth by the Copyright Act, 17 U.S.C. § 101, <i>et seq.</i> , by registering copyrights for each sound recording acquired by the APA Agreement in addition to recording the APA with the USCO.	<a href="#">Dkt. 1</a> , Exh. “A”	Disputed. Although the Asset Purchase Agreement contains Chavez’s purported representation and warranty that he was “the only owner of” the Albums with “good marketable title” thereto, Chavez never obtained signed written agreements granting him all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof.  Begakis Decl. at ¶ 6, Exhibit “L” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Yellowcake Responses to Request for Production at p. 4; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter- Defendant’s Document Production (PLF00024).
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18	2	Sometime after execution of the APA Agreement and the issuance of the copyright registrations by the USCO, Yellowcake learned that Morena had been distributing copies of songs on the Albums and created and/or uploaded videos containing unauthorized derivative works of songs on the Albums to www.YouTube.com when Colonize found that YouTube was reporting “conflicts” between Yellowcake and Morena because both were distributing videos with the same sound recordings on	Complaint, <a href="#">Dkt. 1</a> , Exh. “A”, ¶ 1. Berger Dec. at ¶ 18.	Disputed. Neither Yellowcake nor any of the other Counter-Defendants could have “learned” (i.e., obtained information for the first time) that Hyphy had been distributing the Albums when “Colonize found that YouTube was reporting ‘conflicts’” because Hernandez, an owner and executive of both Yellowcake and Colonize: (a) had known about Chavez since he was a child; and (b) had been working with Chavez through Yellowcake and Colonize since 2016.
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1	the Albums.		Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 134:2-25; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 62:3-6.
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4	2 1 This Court already took judicial notice of Yellowcake’s copyright registrations in the Albums in its prior Order dated March 1, 2021.	<a href="#">Dkt. 42</a> , Pg. 5, fn. 1.	Undisputed.
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7	2 2 Shortly thereafter, in or about June 2020, Yellowcake filed “Takedown Notices” pursuant to 17 U.S.C. § 512 <i>et seq.</i> through YouTube claiming ownership of the songs and notified Hyphy’s distributor, The Orchard, that Hyphy was infringing Yellowcake’s copyrighted Albums.	Berman Dec. <b><u>Exh.</u></b> <b><u>“C”</u></b> .	Undisputed.
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13	2 3 Hyphy completely disregarded these notices and continued to exploit the copyrighted Albums, including but not limited to selling and streaming them on multiple digital service providers like Spotify, Apple Music, iTunes and Amazon Music, even after Yellowcake filed this lawsuit. As such, Yellowcake was required under <a href="#">17 U.S.C. § 512 et seq.</a> and YouTube’s protocols to file this action	Hyphy’s royalty reports extending to 2022 annexed to Berman Dec. as <b><u>Exh. “D”</u></b> .	Disputed. Yellowcake does not own exclusive rights in and to the Albums because Yellowcake did not acquire exclusive rights from Chavez when Yellowcake and Chavez entered into the Asset Purchase Agreement.  Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counterdefendant’s Document Production (PLF000024); Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 22:20-23:3, 23:11-15.
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1		to protect its rights and		
2		prevent further conflicts		
3		with the digital service		
4		providers.		
5	2	Hyphy admitted to	Berman Dec. <u>Exh.</u>	Disputed, to the extent that
6	4	receiving the following	<u>“E”</u> , Response	The Orchard’s most recent
7		gross amounts for the	2(vii) and 4(iii)	revenue report, which was
8		exploitation of each Album:		produced directly to
9		(i) “ <i>El Campesino</i> ,” –		Counter-Defendants via
10		approximately \$20,000;		business record subpoena,
11		(ii) <i>Des de la Cantina de Mi</i>		evidence that Hyphy has
12		<i>Barrio</i> ,” – approximately		only generated a total of
13		\$20,000;		\$104,131 from the
14		(iii) “ <i>Nuestra Historia en</i>		exploitation of all of the
15		<i>Vivo</i> ,” – approximately		Albums combined.
16		\$20,000;		Martinez Decl. at ¶ 11.
17		(iv) “ <i>Corridos de Poca M</i> ,”		
18		– approximately \$20,000;		
19		(v) “ <i>Amigos y Contrarios</i> ” –		
20		approximately \$20,000; and		
21		(vi) “ <i>Naci Con Suerte de</i>		
22		<i>Rey (Mariachi)</i> ” –		
23		approximately \$20,000.		

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### **HYPHY’S ADDITIONAL UNDISPUTED MATERIAL FACTS**



**I. YELLOWCAKE IS NOT THE ALBUMS' SOLE OWNER**

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>1. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.</p> <p>Declaration of John Begakis ("<b><i>Begakis Decl.</i></b>") at ¶ 8, Exhibit "N" thereto, Jose Martinez Deposition Transcript ("<b><i>Martinez Depo</i></b>") at 13:6-14:6.</p>	
<p>2. Counter-Defendant Jesus Chavez Sr. ("<b><i>Chavez</i></b>") is the lead singer of the Spanish-language musical group Los Originales De San Juan (the "<b><i>Group</i></b>").</p> <p>Begakis Decl. at ¶ 13, Exhibit "S" thereto, Jesus Chavez, Sr. Deposition, Volume I ("<b><i>Chavez Depo I</i></b>") at 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Jesus Chavez, Sr. Deposition, Volume II ("<b><i>Chavez Depo II</i></b>") at 16:22-17:5.</p>	
<p>3. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores ("<b><i>Flores</i></b>"), and drummer Alfonso Vargas ("<b><i>Vargas</i></b>").</p> <p>Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Deposition Transcript of Alfonso</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Vargas (“<i>Vargas Depo</i>”) at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>4. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums, which the parties had orally agreed were to be owned by Hyphy (the “<i>Agreement</i>”).</p> <p>Declaration of Jose Martinez (“<i>Martinez Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p>	
<p>5. The albums created pursuant to the Agreement were entitled (1) “Amigos y Contrarios”; (2) “Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “Los Originales Albums” or “Albums”).</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
<p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23, 51:22-25.</p>	
<p>6. One of the other two albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:24:-9, 154:11-155:25.</p>	
<p>7. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy.</p> <p>Martinez Decl. at ¶ 7. Declaration of Domingo Torres Flores (“<i>Flores Decl.</i>”) at ¶¶ 3-5; Declaration of Alfonso Vargas (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>8. Flores and Vargas later confirmed their belief and intent to convey all rights in the Albums to Hyphy by executing enforceable Copyright Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”).</p> <p>Martinez Decl. at ¶ 7, Exhibit “D”</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
thereto.	
<p>9. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>10. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>11. For the first three (of five) of the Los Originales Albums, Hyphy crucially selected the songs to be included in each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>12. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio, and paid for all costs associated with the recording of each Album.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>13. For the first three (of five) of the Los Originales Albums, Hyphy hired the sound engineer.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶</p>	

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>8, Exhibit "N" thereto, Martinez Depo at 59:21-60:7, 61:10-16.</p>	
<p>14. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>15. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 85:14-86:16.</p>	
<p>16. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>17. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (which were recorded and subsequently include in the Albums).</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>18. For the final two (of five) of the Los Originales Albums, Hyphy also</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>19. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an “MC”/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>20. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded portions of the guitarist’s contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>21. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed as an unincorporated partnership in</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>22. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>23. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band’s receipt of all such profits.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q”</p>	



<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>24. Indeed, Flores and Vargas’s co-equal status in the Group is how the Group is known to the public because, for example, none of the individual members of the Group – including Chavez – are individually identified on the Group’s “biography” page located at the website &lt;<a href="https://www.AllMusic.com">https://www.AllMusic.com</a>&gt; (the “<b>Website</b>”). Furthermore, the Group’s “credits” page on the Website indicates that the credited “Artist” on all albums produced by the Group is “Los Originales De San Juan.”</p> <p>Martinez Decl. at ¶ 18.</p>	
<p>25. In addition to its original creative contributions to the production, recording and overall creation of the Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> <p>Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
127:12-21.	
<p>26. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers (“<b>DSPs</b>”) between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p>	
<p>27. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 14, Exhibit “X” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 133:9-136:5.</p>	
<p>28. Plaintiff/Counter-Defendant Yellowcake, Inc. (“Yellowcake”) is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. (“Colonize”) as its “distribution arm” to release and exploit rights acquired by Yellowcake.</p> <p>Begakis Decl. at ¶ 9, Exhibit “O” thereto, Deposition Transcript of Kevin Berger (“<b>Berger Depo</b>”) at 91:19-23; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Deposition Transcript of Jose David Hernandez, Volume I (“<b>Hernandez Depo I</b>”) at 77:19-21.</p>	
29. Counter-Defendant Jose David	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Hernandez (“Hernandez”) is a co-owner of both Yellowcake and Colonize.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>30. In that position, Hernandez has admitted that both corporations have operated – and continue to operate – as a single economic entity, with common ownership, business operations, office space, staff, and many other resources.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 80:3-20.</p>	
<p>31. In or about March 2019, Hernandez approached Chavez about selling the Los Originales Albums to Yellowcake.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>32. Hernandez had previously worked with Hyphy and had secretly gained valuable information on Hyphy’s business and relationship with Chavez.</p>	

<p><b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b></p>	<p><b><u>Counter-Defendants’ Response and Supporting Evidence</u></b></p>
<p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12.</p>	
<p>33. Hernandez thus knew that Hyphy only had an oral agreement with the Group, and approached and convinced Chavez, without Hyphy or the rest of the Group’s knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 107:4-20.</p>	
<p>34. Chavez and Yellowcake attempted to codify their purported agreement via an “Asset Purchase and Assignment Agreement” executed on or about March 21, 2019 (the “<i>Asset Purchase Agreement</i>”).</p> <p>Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039).</p>	
<p>35. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale.</p>	

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>Begakis Decl. at ¶ 7, Exhibit "M" thereto, Plaintiff/Counter-Defendant's Document Production (PLF00024).</p>	
<p>36. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party's respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p> <p>Begakis Decl. at ¶ 6, Exhibit "L" thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "M" thereto, Yellowcake Responses to Request for Production at p. 4.</p>	
<p>37. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion).</p> <p>Martinez Decl. at ¶ 4.</p>	
<p>38. Chavez repeatedly acknowledged Flores and Vargas' valuable contributions to the Albums, which were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his "[y]ears working for the band," and paid Vargas following Chavez's re-sale of the Works to Yellowcake because "[Vargas] was a good musician..."</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
Martinez Decl. at ¶ 4.	

**II. YELLOWCAKE DOES NOT HAVE A TENABLE CLAIM FOR  
COPYRIGHT INFRINGEMENT**

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
<p>39. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.</p> <p>Declaration of John Begakis (“<i>Begakis Decl.</i>”) at ¶ 8, Exhibit “N” thereto, Jose Martinez Deposition Transcript (“<i>Martinez Depo</i>”) at 13:6-14:6.</p>	
<p>40. Counter-Defendant Jesus Chavez Sr. (“<i>Chavez</i>”) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the “<i>Group</i>”).</p> <p>Begakis Decl. at ¶ 13, Exhibit “S” thereto, Jesus Chavez, Sr. Deposition, Volume I (“<i>Chavez Depo I</i>”) at 25:13-14; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Jesus Chavez, Sr. Deposition, Volume II (“<i>Chavez Depo II</i>”) at 16:22-17:5.</p>	
41. The Group operates as a co-equal	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>partnership comprised of Chavez, accordion player Domingo Torres Flores (“<i>Flores</i>”), and drummer Alfonso Vargas (“<i>Vargas</i>”).</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Deposition Transcript of Alfonso Vargas (“<i>Vargas Depo</i>”) at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>42. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums, which the parties had orally agreed were to be owned by Hyphy (the “<i>Agreement</i>”).</p> <p>Declaration of Jose Martinez (“<i>Martinez Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p>	
<p>43. The albums created pursuant to the Agreement were entitled (1)</p>	



<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>“Amigos y Contrarios”; (2) “Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “Los Originales Albums” or “Albums”).</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23, 51:22-25.</p>	
<p>44. One of the other two albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:24:-9, 154:11-155:25.</p>	
<p>45. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy.</p> <p>Martinez Decl. at ¶ 7. Declaration of Domingo Torres Flores (“<i>Flores Decl.</i>”) at ¶¶ 3-5; Declaration of Alfonso Vargas (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>46. Flores and Vargas later confirmed their belief and intent to convey all</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>rights in the Albums to Hyphy by executing enforceable Copyright Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”).</p> <p>Martinez Decl. at ¶ 7, Exhibit “D” thereto.</p>	
<p>47. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>48. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>49. For the first three (of five) of the Los Originales Albums, Hyphy crucially selected the songs to be included in each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>50. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio, and paid for all costs associated with the recording of each Album.</p>	

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
Martinez Decl. at ¶ 8.	
<p>51. For the first three (of five) of the Los Originales Albums, Hyphy hired the sound engineer.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 59:21-60:7, 61:10-16.</p>	
<p>52. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>53. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 85:14-86:16.</p>	
<p>54. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>55. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (which were recorded and subsequently include</p>	

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>in the Albums).</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>56. For the final two (of five) of the Los Originales Albums, Hyphy also directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>57. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an "MC"/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>58. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded portions of the guitarist's contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
75:6-25.	
<p>59. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>60. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p>See Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>61. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band’s receipt of all such profits.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>62. Indeed, Flores and Vargas’s co-equal status in the Group is how the Group is known to the public because, for example, none of the individual members of the Group – including Chavez – are individually identified on the Group’s “biography” page located at the website &lt;<a href="https://www.AllMusic.com">https://www.AllMusic.com</a>&gt; (the “<i>Website</i>”). Furthermore, the Group’s “credits” page on the Website indicates that the credited “Artist” on all albums produced by the Group is “Los Originales De San Juan.”</p> <p>Martinez Decl. at ¶ 18.</p>	
<p>63. In addition to its original creative contributions to the production, recording and overall creation of the</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> <p>Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 127:12-21.</p>	
<p>64. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers (“<i>DSPs</i>”) between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p>	
<p>65. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 14, Exhibit “X” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 133:9-136:5.</p>	
<p>66. Plaintiff/Counter-Defendant Yellowcake, Inc. (“Yellowcake”) is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. (“Colonize”) as its “distribution arm” to release and exploit rights acquired by Yellowcake.</p> <p>Begakis Decl. at ¶ 9, Exhibit “O”</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>thereto, Deposition Transcript of Kevin Berger (“<i>Berger Depo</i>”) at 91:19-23; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Deposition Transcript of Jose David Hernandez, Volume I (“<i>Hernandez Depo I</i>”) at 77:19-21.</p>	
<p>67. Counter-Defendant Jose David Hernandez (“Hernandez”) is a co-owner of both Yellowcake and Colonize.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>68. In that position, Hernandez has admitted that both corporations have operated – and continue to operate – as a single economic entity, with common ownership, business operations, office space, staff, and many other resources.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 80:3-20.</p>	
<p>69. In or about March 2019, Hernandez approached Chavez about selling the Los Originales Albums to Yellowcake.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9,</p>	



<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
79:17-80:2, 81:7-16.	
<p>70. Hernandez had previously worked with Hyphy and had secretly gained valuable information on Hyphy’s business and relationship with Chavez.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12.</p>	
<p>71. Hernandez thus knew that Hyphy only had an oral agreement with the Group, and approached and convinced Chavez, without Hyphy or the rest of the Group’s knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 107:4-20.</p>	
<p>72. Chavez and Yellowcake attempted to codify their purported agreement via an “Asset Purchase and Assignment Agreement” executed on or about March 21, 2019 (the “<i>Asset Purchase Agreement</i>”).</p> <p>Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039).</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>73. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale.</p> <p>Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF00024).</p>	
<p>74. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party’s respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p> <p>Begakis Decl. at ¶ 6, Exhibit “L” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Yellowcake Responses to Request for Production at p. 4.</p>	
<p>75. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion).</p> <p>Martinez Decl. at ¶ 4.</p>	
<p>76. Chavez repeatedly acknowledged Flores and Vargas’ valuable contributions to the Albums, which</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his “[y]ears working for the band,” and paid Vargas following Chavez’s re-sale of the Works to Yellowcake because “[Vargas] was a good musician...”</p> <p>Martinez Decl. at ¶ 4.</p>	
<p>77. Counter-Defendants entirely failed to serve any Initial Disclosures, and the discovery cut-off date has come and gone.</p> <p>Begakis Decl. at ¶ 3.</p>	
<p>78. Yellowcake thus failed to identify any damages beyond the mere categories of damages set out in the Complaint.</p> <p>Begakis Decl. at ¶¶ 4-5.</p>	
<p>79. Hyphy incurred approximately \$124,700 in verifiable costs, but only generated approximately \$104,131 in verifiable revenue – establishing that Hyphy has taken a loss of \$20,569 on the Albums.</p> <p>Martinez Decl. at ¶¶ 10-12.</p>	

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### **III. COUNTER-DEFENDANTS INFRINGED HYPHY’S COPYRIGHTS**

<u><b>Hyphy’s Undisputed Material Facts and Supporting Evidence</b></u>	<u><b>Counter-Defendants’ Response and Supporting Evidence</b></u>
<p>80. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.</p> <p>Declaration of John Begakis (“<b>Begakis Decl.</b>”) at ¶ 8, Exhibit “N” thereto, Jose Martinez Deposition Transcript (“<b>Martinez Depo</b>”) at 13:6-14:6.</p>	
<p>81. Counter-Defendant Jesus Chavez Sr. (“<b>Chavez</b>”) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the “<b>Group</b>”).</p> <p>Begakis Decl. at ¶ 13, Exhibit “S” thereto, Jesus Chavez, Sr. Deposition, Volume I (“<b>Chavez Depo I</b>”) at 25:13-14; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Jesus Chavez, Sr. Deposition, Volume II (“<b>Chavez Depo II</b>”) at 16:22-17:5.</p>	
<p>82. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (“<b>Flores</b>”), and drummer Alfonso Vargas (“<b>Vargas</b>”).</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Deposition Transcript of Alfonso Vargas (“<b>Vargas Depo</b>”) at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>83. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums, which the parties had orally agreed were to be owned by Hyphy (the “<i>Agreement</i>”).</p> <p>Declaration of Jose Martinez (“<i>Martinez Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p>	
<p>84. The albums created pursuant to the Agreement were entitled (1) “Amigos y Contrarios”; (2) “Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “Los Originales Albums” or “Albums”).</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
44:7-23, 51:22-25.	
<p>85. One of the other two albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:24:-9, 154:11-155:25.</p>	
<p>86. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy.</p> <p>Martinez Decl. at ¶ 7. Declaration of Domingo Torres Flores (“<i>Flores Decl.</i>”) at ¶¶ 3-5; Declaration of Alfonso Vargas (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>87. Flores and Vargas later confirmed their belief and intent to convey all rights in the Albums to Hyphy by executing enforceable Copyright Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”).</p> <p>Martinez Decl. at ¶ 7, Exhibit “D” thereto.</p>	
88. Unlike larger record labels, however, Hyphy closely	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>collaborated with the Group to create the Albums.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>89. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>90. For the first three (of five) of the Los Originales Albums, Hyphy crucially selected the songs to be included in each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>91. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio, and paid for all costs associated with the recording of each Album.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>92. For the first three (of five) of the Los Originales Albums, Hyphy hired the sound engineer.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 59:21-60:7, 61:10-16.</p>	
<p>93. For the first three (of five) of the</p>	

<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums.</p> <p>Martinez Decl. at ¶ 8.</p>	
<p>94. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 85:14-86:16.</p>	
<p>95. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>96. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (which were recorded and subsequently include in the Albums).</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p>	
<p>97. For the final two (of five) of the Los Originales Albums, Hyphy also directly employed, supervised, and directed the services of the sound engineer and videographer who</p>	



<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>98. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an “MC”/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>99. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded portions of the guitarist’s contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 75:6-25.</p>	
<p>100. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>101. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>102. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band’s receipt of all such profits.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>“R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>103. Indeed, Flores and Vargas’s co-equal status in the Group is how the Group is known to the public because, for example, none of the individual members of the Group – including Chavez – are individually identified on the Group’s “biography” page located at the website &lt;<a href="https://www.AllMusic.com">https://www.AllMusic.com</a>&gt; (the “<b>Website</b>”). Furthermore, the Group’s “credits” page on the Website indicates that the credited “Artist” on all albums produced by the Group is “Los Originales De San Juan.”</p> <p>Martinez Decl. at ¶ 18.</p>	
<p>104. In addition to its original creative contributions to the production, recording and overall creation of the Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> <p>Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 127:12-21.</p>	
<p>105. Hyphy released the Albums, with the Album Artwork, for distribution</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>through all available digital service providers (“<b>DSPs</b>”) between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p>	
<p>106. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 14, Exhibit “X” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 133:9-136:5.</p>	
<p>107. Plaintiff/Counter-Defendant Yellowcake, Inc. (“Yellowcake”) is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. (“Colonize”) as its “distribution arm” to release and exploit rights acquired by Yellowcake.</p> <p>Begakis Decl. at ¶ 9, Exhibit “O” thereto, Deposition Transcript of Kevin Berger (“<b>Berger Depo</b>”) at 91:19-23; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Deposition Transcript of Jose David Hernandez, Volume I (“<b>Hernandez Depo I</b>”) at 77:19-21.</p>	
<p>108. Counter-Defendant Jose David Hernandez (“Hernandez”) is a co-owner of both Yellowcake and Colonize.</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>109. In that position, Hernandez has admitted that both corporations have operated – and continue to operate – as a single economic entity, with common ownership, business operations, office space, staff, and many other resources.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 80:3-20.</p>	
<p>110. In or about March 2019, Hernandez approached Chavez about selling the Los Originales Albums to Yellowcake.</p> <p>Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>111. Hernandez had previously worked with Hyphy and had secretly gained valuable information on Hyphy’s business and relationship with Chavez.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12.</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
<p>112. Hernandez thus knew that Hyphy only had an oral agreement with the Group, and approached and convinced Chavez, without Hyphy or the rest of the Group’s knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000.</p> <p>Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 107:4-20.</p>	
<p>113. Chavez and Yellowcake attempted to codify their purported agreement via an “Asset Purchase and Assignment Agreement” executed on or about March 21, 2019 (the “<i>Asset Purchase Agreement</i>”).</p> <p>Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039).</p>	
<p>114. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale.</p> <p>Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s</p>	

<b><u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants’ Response and Supporting Evidence</u></b>
Document Production (PLF00024).	
<p>115. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party’s respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p> <p>Begakis Decl. at ¶ 6, Exhibit “L” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Yellowcake Responses to Request for Production at p. 4.</p>	
<p>116. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion).</p> <p>Martinez Decl. at ¶ 4.</p>	
<p>117. Chavez repeatedly acknowledged Flores and Vargas’ valuable contributions to the Albums, which were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his “[y]ears working for the band,” and paid Vargas following Chavez’s re-sale of the Works to Yellowcake because “[Vargas] was a good musician...”</p> <p>Martinez Decl. at ¶ 4.</p>	
118. Counter-Defendants entirely failed	


<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Counter-Defendants’ Response and Supporting Evidence</u>
<p>to serve any Initial Disclosures, and the discovery cut-off date has come and gone.</p> <p>Begakis Decl. at ¶ 3.</p>	
<p>119. Yellowcake thus failed to identify any damages beyond the mere categories of damages set out in the Complaint.</p> <p>Begakis Decl. at ¶¶ 4-5.</p>	
<p>120. Hyphy incurred approximately \$124,700 in verifiable costs, but only generated approximately \$104,131 in verifiable revenue – establishing that Hyphy has taken a loss of \$20,569 on the Albums.</p> <p>Martinez Decl. at ¶¶ 10-12.</p>	
<p>121. Hyphy’s expert referred to UPC numbers as “digital social security numbers for products.</p> <p>Begakis Decl. at ¶ 15, Exhibit “U” thereto, Deposition Transcript of Lawrence H. Katz, Esq. (“<i>Katz Depo</i>”) at 46:1-47:4, 46:23-47:4, 47:5-18.</p>	
<p>122. Eduardo Leon, the principal of Morena Music, flatly denies every accusation Counter-Defendants have improperly and untowardly lobbed at Morena Music.</p> <p>Declaration of Eduardo Leon (“<i>Leon Decl.</i>”) at ¶¶ 2-6.</p>	
<p>123. It must also be pointed out that Hyphy and non-party Morena</p>	



<b><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></b>	<b><u>Counter-Defendants' Response and Supporting Evidence</u></b>
<p>Music are competitors, who have no working relationship, other than that both have been targeted by the copyright trolls at Yellowcake.</p> <p>Martinez Decl. at ¶ 19; Leon Decl. at ¶ 4</p>	
<p>124. Mr. Hernandez has already lied under oath by claiming that Counter-Defendants would never distribute the Albums with Hyphy's Album Artwork, even though Hyphy has proven that they have.</p> <p>Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 211:24-212:6.</p>	

DATED: August 15, 2023

**ALTVIEW LAW GROUP, LLP**

By:   
 JOHN M. BEGAKIS  
*Attorneys for Defendant/Counterclaimant*  
 HYPHY MUSIC, INC., a California corporation

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 15, 2023

By: /s/ John Begakis  
John M. Begakis